Remarks

Reconsideration of this application is requested in view of the foregoing amendments and the following remarks. Claims 1-20 are in the case.

The amendment makes corrections in the text of the Abstract of the Disclosure requested by the Examiner. Reconsideration and withdrawal of the objection to the Abstract of the Disclosure is respectfully requested.

Claim Rejection under 35 U.S.C. 103 (a)

The subject matter of Claims 1-20 was rejected under 35 U.S.C. 103(a) as being unpatentable over Mason '741 in view of Orman et al. '738. Applicants respectfully traverse this rejection on the basis that the Examiner has failed to establish a *prima facie* case of obviousness.

The initial burden of proof standard applicable when making a determination of obviousness under section 103(a) was clearly stated in *In re Fritch*, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992), as follows:

> In proceedings before the Patent and Trademark office, the Examiner bears the burden of establishing a prima facie case of obviousness based upon the prior art. . . . '[The Examiner] can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.' The patent applicant may then attack the Examiner's prima facie determination as improperly made out, or the applicant may present objective evidence tending to support a conclusion of nonobviousness.

It is of course well settled that in applying Section 103(a), it is necessary to consider each and every limitation set forth in the claims. No limitation can be ignored. A rejection which fails to consider all claim limitations is improper and non-sustainable. *In re Glass*, 176 U.S.P.Q. 489 (CCPA 1973). In deciding obviousness, one must look at the prior art from the vantage point in time prior to when the invention was made. Moreover, when combining prior art references to find obviousness, there must be something in the prior art as a whole which suggests the desirability, and therefore the obviousness, of making the claimed combination. *Uniroyal, Inc. v. Rudkin-Wiley*

Corp., 837 F.2d 1044, 5 U.S.P.Q.2d 1432 (Fed. Cir. 1988). "The combination of elements from non-analogous sources, in a manner that reconstructs the applicant's invention only with the benefit of hindsight, is insufficient to present a *prima facie* case of obviousness." *In re Oetiker*, 977 F.2d 1443, 24 U.S.P.Q.2d 1443 (Fed. Cir. 1992).

The examiner has failed to show an objective teaching in the prior art or knowledge generally available to one of ordinary skill in the art that would lead an individual to combine the teachings of Mason '741 and Orman et al. '738. The examiner has also failed to show that a combination of those teachings makes obvious the applicant's invention.

The rejection appears to be based on an erroneous reading of the Mason '741 patent and an erroneous assertion that Mason '741 patent teaches "dispensing fluids to the cane." The Mason '741 patent in fact does not teach applying fluid to cane. Instead, Mason '741 teaches applying a water mist to dusty air. This can be clearly appreciated from Fig. 5 of Mason '741, as well as the first full paragraph of column 6 of Mason '741. There, it can be seen that the water is described as wetting the dust and debris-filled *air*, and that air is wetted *after* it has blown across dirty cane billets. The billets fall from conveyor 41 to conveyor 57 (see Fig. 6) without ever being wetted by the spray nozzles 47 or any other liquid source. Thus, in Mason '741, the sugar cane billets are never sprayed with any fluid. In contrast, present Claim 1 specifically states that the nozzles of the claimed apparatus are disposed to direct the liquid composition "onto the billets" either before or as they are received by a hopper.

Furthermore, the other cited reference, Orman et al. '738 does not refer to sugar cane or sugar cane billets in any way, nor does it suggest that the treatment it discloses could be incorporated in some way into a sugar cane harvesting process or apparatus, much less one involving pre-cut sugar cane (i.e., billets). Thus, when viewed as a whole, no fair reading of the cited references supplies the necessary motivation or suggestion to combine the actual teachings of the references to arrive at the invention as presently claimed. Since a *prima facie* case of obviousness has not be established, this rejection should be reconsidered and withdrawn.

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It is believed that the case is in condition for allowance. Further and favorable action is solicited. If matters remain requiring further consideration that may be expedited by discussion, the Examiner is requested to telephone the undersigned at the number given below so that such matters may be discussed and, if possible, promptly resolved.

Respectfully submitted,

R. Andrew Patty II
Reg. No. 38,992
Attorney of Record

Phone: (225) 291-4600
Fax: (225) 291-4606

CERTIFICATE OF TRANSMISSION

I hereby certify that, in the course of ordinary business, this paper (along with any referred to as being attached or enclosed) is being transmitted on the date indicated below to the United States Patent and Trademark Office via facsimile number 703-872-9306.

Sept. 28, 2004
Date

Gina R. Merritt